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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT J. BERNABEO,

Defendant and Appellant.

D053794

(Super. Ct. No. SCN235397)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel B. Goldstein, Judge. Affirmed.

Robert J. Bernabeo entered a negotiated guilty plea to vehicular manslaughter while intoxicated (Pen. Code,¹ § 191.5, subd. (b)) and admitted he personally inflicted great bodily injury within the meaning of section 1192.7, subdivision (c)(8). Under the plea arrangement, the prosecution agreed to dismiss other charges and the sentence was to be determined by the trial court. The trial court sentenced Bernabeo to the maximum

¹ Statutory references are to the Penal Code unless otherwise specified.

term of four years in prison and ordered him to pay \$12,880 in restitution to the mother of the 14-year-old victim.

FACTS

On September 30, 2007, Kas Saunders and Daniel Gonzalez rode their bikes southbound on Cole Grade Road toward Valley Center High School. Gonzalez was about 15 feet in front of Saunders. Gonzalez heard a loud noise and looked back to see Saunders propped up on the windshield of an automobile driven by Bernabeo. Saunders bounced off the windshield and went underneath the automobile. Bernabeo continued to drive for 150 feet, dragging Saunders along the way. Bernabeo stopped the automobile at the stoplight of Cole Grade Road and West Oak Glen Road. Saunders was pronounced dead at the scene.

Bernabeo seemed detached and disoriented. A California Highway Patrol officer who administered tests to Bernabeo noted he showed signs of impairment and confusion. Bernabeo told the officer that he was taking Dilantin for seizures. Bernabeo had a doctor's prescription for Dilantin.

On February 18, 2007, the Department of Motor Vehicles (DMV) had suspended Bernabeo's driver's license for disability reasons. A physician has a mandatory duty to report individuals who have seizure disorders to the local public health officer, who in turn is required to transmit the information to the DMV. (See Health & Saf. Code, § 103900, subds. (a), (b).) The DMV has the discretion to refuse to issue or renew driver's licenses for individuals with seizure disorders. (Veh. Code, § 12806, subd. (c).)

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the trial court properly awarded the deceased victim's mother restitution for lost wages, including the effect of the lack of a defense objection at sentencing; (2) whether the court properly chose the upper term when the crime occurred after the enactment of amendments to section 1170 pursuant to Senate Bill No. 40 (2007-2008 Reg. Sess.); and (3) whether the court correctly calculated Bernabeo's custody credits.

We granted Bernabeo permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Bernabeo on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.